

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Michael Sean Speight

V.

Civil No. **1:24-cv-00055**
Chief Judge Landya B. McCafferty

Amanda Kaelblein
Michael Kaelblein
Nancy Kaelblein
Eric Stephanie(Professional, individual capacity)

**EMERGENCY MOTION TO PREVENT DISMISSAL TO RE-SERVE
DEFENDANTS**

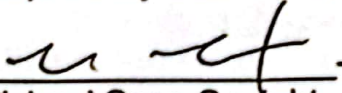
The plaintiff requests this Honorable Court grant the plaintiff the opportunity to show good faith, under Rule 4 to re-serve the defendants.

The defendants claim they were not served properly. Plaintiff is requesting all defaults against the defendants be removed and plaintiff be allowed to serve the defendants again, even though the defendants were served already in good faith.

WHEREFORE, the plaintiff requests this Court to grant this motion, and defaults against the defendants be removed. To prevent this process to re-start from the beginning.

Date 7/14/24

Respectfully Submitted,


Michael Sean Speight
100 Main St #106
Pembroke, NH 03275

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**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION TO
PREVENT DISMISSAL TO RE-SERVE DEFENDANTS**

INTRODUCTION

The plaintiff first filed this complaint in "In Forma Pauperis" , the service had not gone out yet when the plaintiff returned to work.

The plaintiff paid the filing fee, gathered all documents from the Court, went to the sheriff's offices Suffolk , and Middlesex.

Handed over the documents to the sheriff's Offices, paid a total of \$350.

Plaintiff received the service papers in the mail after service was complete,

and handed them over to the Court.

Any deficiency in service is not the plaintiffs failure to do anything or neglect.

The plaintiff in good faith, is requesting defaults be removed from these defendants and to be able to be re-served seeing defendants claim they were not served properly.

To prevent this case starting over from the beginning, and in the interest of justice.

STATEMENT OF FACTS

The plaintiff followed proper Rules and Procedures with Rule 4 in service, any neglect in service was not due from the plaintiff.

LEGAL ARGUMENT

In Mann v. Castiel, 681 F.3d 368 (D.C. Cir. 2012) " The Court reversed the dismissal of a case due to improper service, noting that dismissal is not warranted if there is reasonable prospect that the plaintiff will be able to serve the defendants properly."

The ruling highlights the Court's discretion to allow re-service rather than dismissing the case.

Since the defendants are claiming improper service, the plaintiff is willing to re-serve them.

And in Umbenhaur v. Woog, 969 F2d. 25 (3d Cir. 1992) “ The Third Circuit ruled that the district courts should extend time for service or permit re-service if there is any likelihood that proper service can be achieved and there is no significant prejudice to the defendants.”

This decision reflects a preference for allowing cases to proceed on their merits.

There is no prejudice to the defendants when their Defaults will be removed, and the plaintiff has a strong likelihood of winning this case.

CONCLUSION

Since the plaintiff picked up the documents from the clerk's office, and turned them over to both Sheriffs offices. If there was any neglect in service it was not the plaintiff's fault. The plaintiff in good faith will reserve the defendants again . To avoid refilling and starting this process all over. Also there is no prejudice to the defendants if the Court removes the defaults against them.

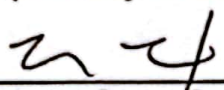
RELIEF REQUEST

WHEREFORE, the plaintiff requests to reserve the defendants in the

interest of justice.

Date 7/14/24

Respectfully Submitted,


Michael Sean Speight
100 Main St #106
Pembroke, NH 03275

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George Phelan(Professional, individual capacity) .
Eric Stephanie(Professional, individual capacity)

**AFFIDAVIT IN SUPPORT OF MOTION TO RE-SERVE THE
DEFENDANTS**

**I swear under the pains and penalty of perjury that everything is true
and correct to the best of my knowledge .**

Date 7/14/24


**Michael sean Speight
100 Main st.#106
Pembroke,NH 03275**

State of New Hampshire, county of Merrimack The foregoing
instrument was acknowledged before me on this 7/14/24

CHRISTOPHER LACROIX
My commission expires 5/6/25

CHRISTOPHER D. LACROIX
Justice of the Peace - New Hampshire
My Commission Expires May 6, 2025

